

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Project
Siting Application

Case No. PU-14-842

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

January 20, 2016

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk.

Brian Bjella and Blaine Johnson, Attorneys at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of Dakota Access, LLC.

Zachary E. Pelham, Special Assistant Attorney General, 314 East Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the Public Service Commission.

Derrick Braaten, Attorney at Law, Baumstark Braaten Law Partners, 109 North Fourth Street, Suite 100, Bismarck, North Dakota 58501, and Matt J. Kelly, Tarlow and Stonecipher, PLLC, 1705 West College Street, Bozeman, Montana 59715, on behalf of Intervenor Douglas Ferebee, Dale Ferebee, Lois Ferebee, John Schultz, Hildegard Steckler, Joel Johnson, John Steckler, Thomas L. Tuhy, Lois Wanner, Grant Johnson, Jeff Renner, Angie Renner, Edward Clive, Patricia G. Pelton, Vernon J. Leingang, Dennis Kunkel, Paula Jo A. Wanner, Adam J. Wanner, Leo Reisenauer, Karen Reisenauer, Robert J. Slavick, Kathleen Schmaltz, Timothy Wasen, Roberta Wasen, Russell J. Kunkel, Nina Filibeck, Michael L. Hapt, Bonnie Hapt, Michael Isaak, Janice Isaak, Gordon Kroh, Wesley Kroh, Eldon Kroh, Daniel H. Neurohr, Charlotte Neurohr, Delbert Zarr, Larry Erdmann, Hollis Erdmann, Zane Voigt, Alice Voigt, Florence Bessaw, Joann Payne, Mary Jane Miller, Doug Hille, Janet Anderson, Gail Howard, Milton O. Lindvig, and Jerome Rice.

Bryan L. Giese, Attorney at Law, 107 First Avenue Northwest, Mandan, North Dakota 58554, on behalf of Intervenor Douglas E. Bopp.

Bryan Van Grinsven, Attorney at Law, McGee, Hankla & Backes, P.C., 2400 Burdick Expressway East, Suite 100, Minot, North Dakota 58701, on behalf of Intervenor North Dakota Pipeline Company, LLC.

Wade C. Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On December 22, 2014, Dakota Access, LLC (Dakota Access) filed applications for a certificate of corridor compatibility and a route permit concerning approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County (Project). The Project will be known as the Dakota Access Pipeline.

Also on December 22, 2014, Dakota Access filed an application for waivers of procedures and time schedules established under North Dakota Century Code sections 49-22-07.2, 49-22-08, 49-22-08.1, 49-22-13, and North Dakota Administrative Code section 69-06-01-02, requiring separate filings, separate notices, and separate hearings on such applications.

On March 25, 2015, the Commission deemed complete the applications for a certificate of corridor compatibility and a route permit, conditioned upon receiving from the applicant ten days prior to the first hearing in this case, the wetlands and waterbody field survey report, the wildlife inventory field survey report, the habitat assessment field survey report, and the tree and shrub inventory report (Reports).

Also on March 25, 2015, the Commission issued a Notice of Filings and Notice of Hearings (Notice) scheduling hearings for May 28, 2015, at 8:30 a.m. Central Time, at the Baymont Inn, 2611 Old Red Trail, Mandan, North Dakota 58554; June 15, 2015, at 9:00 a.m. Mountain Time, at the High Plains Cultural Center, 194 Central Ave South, Killdeer, North Dakota 58640; and June 26, 2015, at 9:00 a.m. Central Time, at the Ernie French Center, 14120 Highway 2, Williston, North Dakota 58801.

The Notice identified the following issues to be considered with respect to the application for a waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects such that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice identified the following issues to be considered with respect to the applications for certificate of corridor compatibility and route permit:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On April 14, 2015, and on May 15, 2015, Dakota Access filed the Reports.

On May 11, 2015, on May 15, 2015, on May 18, 2015, on May 20, 2015, and on May 22, 2015, Petitions to Intervene (Petitions) were filed by Intervenors.

On May 27, 2015, the Procedural Hearing Office issued an Order granting the Petitions.

The hearings were held as scheduled.

On September 14, 2015, Dakota Access filed information concerning proposed adjustments to the corridor and route identified within the applications for a certificate of corridor compatibility and a route permit (Seventeen Adjustments), two of which were proposed to be located outside of the Study Area.

On September 16, 2015, the Commission issued a Notice of Opportunity for Hearing (Notice of Opportunity) concerning the Seventeen Adjustments. The Notice of Opportunity indicated that persons desiring a hearing must file a written request identifying their interest in the proceedings and the reasons for requesting a hearing by October 22, 2015. The Notice of Opportunity additionally indicated that the Commission can determine the matter without a hearing. No requests for a hearing were received by the deadline of October 22, 2015.

On December 2, 2015, Dakota Access filed information concerning one route adjustment to the corridor and route identified within the applications for a certificate of corridor compatibility and a route permit that would be located within the Study Area (Hovde Reroute).

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Dakota Access is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by corporate papers filed with the Commission on February 20, 2015, in Case No. PU-15-102.

Size, Type, and Preferred Location of Facility

2. The Project will consist of 358 miles of 12-, 20-, 24-, and 30-inch diameter steel crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota. The Project will also include tank terminals near Stanley in Mountrail County (Stanley Tank Terminal), near Tioga in Williams County (Ramberg Tank Terminal), near Epping in Williams County (Epping Tank Terminal), near Trenton in Williams County (Trenton Tank Terminal), near Watford City in McKenzie County (Watford City Tank Terminal), and near Johnsons Corner in McKenzie County, North Dakota (Johnsons Corner Tank Terminal).

3. The Project will originate at the Stanley Tank Terminal and will exit North Dakota to South Dakota at a point near Westfield, North Dakota.

4. The Project is part of an approximately 1,154-mile-long planned pipeline system that will stretch from near Stanley, North Dakota, to Patoka, Illinois.

5. Above-ground facilities associated with the Project will include approximately 59 block valves, and in-line inspection tool launch and receiver sites.

6. The maximum operating pressure for the pipeline will be 1,400 pounds per square inch throughout the Project.

7. Pipe wall thicknesses will be as follows: 0.375 inches for the 12-inch pipeline, except at crossing sites where the thickness will be 0.500 inches; 0.312 inches for the 20-inch pipeline, except at crossing sites where the thickness will be 0.438 inches; 0.375 inches for the 24-inch pipeline, except at crossing sites where the thickness will be 0.625 inches; and 0.429 inches for the 30-inch pipeline, except at the crossing sites where the thickness will be 0.625 inches.

8. The Stanley Tank Terminal will include two 120,000-barrel tanks; the Ramberg Tank Terminal will include one 100,000-barrel, one 150,000-barrel, and one 200,000-barrel tank; the Epping Tank Terminal and the Trenton Tank Terminal will each include one 100,000-barrel and one 150,000-barrel tank; the Watford City Tank Terminal will include two 100,000-barrel and one 150,000-barrel tanks; and the Johnsons Corner Tank Terminal will contain two 200,000-barrel tanks. Each tank terminal site will contain a pump station.

9. The pipeline diameter will be 12 inches between the Stanley Tank Terminal and the Ramberg Tank Terminal, 20 inches between the Ramberg Tank Terminal and the Trenton Tank Terminal, 24 inches between the Trenton Tank Terminal and the Watford City Tank Terminal, and 30 inches from the Watford City Terminal throughout the remainder of its route within North Dakota.

10. The maximum capacity of the Project will be 100,000 barrels per day between the Stanley Tank Terminal and the Ramberg Tank Terminal, 240,000 barrels per day between the Ramberg Tank Terminal and the Epping Tank Terminal, 300,000 barrels per day between the Epping Tank Terminal and the Trenton Tank Terminal, 450,000 barrels per day between the Trenton Tank Terminal and the Watford City Tank Terminal, and 600,000 barrels per day between the Watford City Tank Terminal and the South Dakota border.

11. Dakota Access testified that the design, construction, and operation of the pipeline will be in accordance with the United States Department of Transportation (USDOT) regulations governing the transportation of crude oil, including USDOT regulations as set forth in 49 Code of Federal Regulations Part 195.

12. The total cost of the Project is estimated to be \$1.41 Billion.

Study of Preferred Location

13. Dakota Access evaluated a one-mile-wide study area centered on the route (Study Area) for wetlands and waterbodies, vegetation, trees and shrubs, wildlife, protected species and critical habitats, soils, and geology.

14. Dakota Access conducted field surveys on the tank terminal sites and on a 400-foot-wide area centered on the route for the majority of the Project extent and where survey access was obtained for the purpose of inventorying wetlands and waterbodies, wildlife, protected species, and critical habitats (Survey Area).

15. Dakota Access conducted a Class I cultural resources literature search on the Study Area.

16. Dakota Access conducted a Class III cultural resources field inventory on the Survey Area.

17. The following agencies were contacted by Dakota Access: the United States Fish and Wildlife Service (USFWS); the United States Army Corps of Engineers (USACE); the United States Bureau of Reclamation (USBOR); the United States National Park Service; the United States Department of Agriculture, the Natural Resources Conservation Service (NRCS); the United States Department of Agriculture, Farm Service Agency; the United States Air Force (USAF); the North Dakota Parks and Recreation Department (NDPRD); the North Dakota Department of Health (NDDOH);

the North Dakota Department of Agriculture; the North Dakota Office of the State Engineer; the North Dakota Department of Trust Lands (NDDTL); the North Dakota Game and Fish Department (NDGFD); the North Dakota State Historic Preservation Office (NDSHPO); the North Dakota State Soil Conservation Committee; the Mountrail County Water Resource District; the Williams County Water Resource District; the McKenzie County Water Resource District; the Dunn County Water Resource District; the Mercer County Water Resource District; the Morton County Water Resource District; the Emmons County Water Resource District; the Mountrail County Weed Control Board; the Williams County Weed Board; the McKenzie County Weed Board; the Dunn County Weed Board; the Mercer County Weed Board; the Morton County Weed Board; and the Emmons County Weed Board.

18. In a response dated November 12, 2014, the USFWS indicated that the route will avoid all USFWS easement interests in Emmons County, North Dakota.

19. In a response dated October 31, 2014, the USBOR requested additional information relating to the crossing of the Buford-Trenton Irrigation District (Buford-Trenton) canal and drainage works, a federally constructed facility, and further indicated that both the USBOR and Buford-Trenton must approve the crossing request.

20. In a response dated November 17, 2014, the NRCS indicated that there will be no impact to NRCS easements in North Dakota. In a response dated November 21, 2014, the NRCS indicated that crossing private land enrolled in the Conservation Reserve Program (CRP) may not take place between April 15 and August 1 annually without a waiver granted by the NRCS.

21. In a response dated November 18, 2014, the USAF indicated that while the Project will not intersect restrictive easements surrounding intercontinental ballistic missile facilities, buried USAF cable will be crossed three times. In a response dated November 19, 2014, the USAF indicated that USAF personnel must be present during excavation that may impact buried USAF cable at the three crossings.

22. In a response dated December 10, 2014, the NDPRD indicated that the Project will not affect state park lands managed by the NDPRD. The NDPRD further indicated that Land and Water Conservation Fund and federally funded recreation trail projects coordinated by the NDPRD are present within the Study Area, and that species of concern and significant ecological communities have been documented within and adjacent to the Study Area. The NDPRD recommended construction be completed in a manner that minimizes visual impact to scenic byways and that impacted areas be revegetated with species native to the Project area.

23. In a response dated December 4, 2014, the Dunn County Weed Board recommended that any areas to be excavated as part of the Project be inspected prior to excavation and for three years post-construction, and also that any noxious or invasive weeds present be chemically treated.

Siting Criteria

24. The Commission has established criteria pursuant to North Dakota Century Code section 49-22-05.1 to guide the Commission in evaluating the suitability of granting a certificate of corridor compatibility and route permit. The criteria, as set forth in North Dakota Administrative Code section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. Dakota Access evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.

25. An Exclusion Area may not encompass more than fifty percent of a corridor width unless there is no reasonable alternative. An Exclusion Area must be excluded in the consideration of a route for a transmission facility. A buffer zone to protect the integrity of the Exclusion Area must be included. A transmission facility route must not be sited within an Exclusion Area.

26. Dakota Access testified that 509 cultural resource sites were identified during the Class III field survey on those areas where survey access was obtained. Dakota Access further testified that survey results will be provided to NDSHPO for review as information becomes available, and that Dakota Access will work with NDSHPO to avoid and mitigate impacts to cultural resources.

27. Areas critical to the life stages of threatened or endangered animal or plant species are considered to be Exclusion Areas. The Missouri River in North Dakota has been designated by the USFWS as critical habitat for both the interior least tern, an endangered avian species, and the piping plover, a threatened avian species. Dakota Access testified that the Project will be bored beneath the Missouri River and its adjacent uplands in order to protect the integrity of this Exclusion Area.

28. No other Exclusion Areas are present within the Survey Area.

29. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes.

30. A transmission facility route may not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there is no reasonable alternative. Economic considerations alone are not sufficient to establish no reasonable alternative.

31. The route will cross the Little Missouri River, which has been designated a State Scenic River. Dakota Access testified that the crossing will be bored in order to protect the integrity of this Avoidance Area. The Little Missouri River stretches from near the southwest corner of North Dakota's border with South Dakota to Lake Sakakawea. The Commission finds there is no reasonable alternative to the proposed route crossing this Avoidance Area.

32. The route will cross the City of Williston's wellhead protection area at an extension along its northern edge for a distance of approximately 1.5 miles. Dakota Access indicated that isolating valves will be installed along the route in this high consequence as required by PHMSA in order to minimize potential impacts. In order to reach the proposed Trenton Tank Terminal site while circumventing the majority of the wellhead protection area, the Commission finds there is no reasonable alternative to the proposed route crossing this Avoidance Area.

33. Two North Dakota-designated scenic byways, North Dakota Highway 22 and United States Highway 10, will be crossed by the route. Both crossings will be bored, and Dakota Access indicated that visual impacts will be temporary and related only to Project construction, as no permanent above-ground structures will be installed at either scenic byway crossing. Because of the extensive nature of these scenic byways, the Commission finds no reasonable alternative to the proposed route crossing these Avoidance Areas.

34. Dakota Access indicated that there are four businesses and eight rural residences located within 500 feet of the route. Dakota Access has obtained waivers from all property owners of these businesses and rural residences and has provided copies of the waivers in this proceeding.

35. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated if it is demonstrated that any significant adverse effects resulting from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum.

36. Federally jurisdictional wetland and waterbody crossings will be subject to oversight through the USACE's Nationwide 12 and Section 10 permitting processes.

37. Dakota Access testified that it will work with landowners to minimize impacts to irrigated lands, and will compensate landowners for any associated losses.

38. Dakota Access has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.

Measures to Minimize Impact

39. Dakota Access testified that a supervisory control and data acquisition system (SCADA) will be installed as part of the Project, and operations will be continuously monitored by a control center located in Houston, Texas.
40. Dakota Access testified that all valves will be installed with remote actuators to allow them to be closed remotely from the control center in the event of an emergency.
41. Dakota Access testified that 100% of all field welds will be tested.
42. Dakota Access testified that pumps will be located at pump terminals within enclosed and insulated buildings to minimize noise.
43. Dakota Access indicated that emergency response equipment will be located in Epping, Williston, Watford City, and Bismarck, North Dakota.
44. Dakota Access testified that it will participate in the North Dakota One-Call notification system.
45. Dakota Access testified that it will contract with a third-party inspection firm to ensure regulatory and environmental compliance.
46. Dakota Access testified that one USFWS grassland easement will be crossed by the route, and that this area will be bored to protect its integrity.
47. Dakota Access testified that the Missouri River will be bored at both locations where it is crossed by the route. The estimated depth of the bore beneath the river bed is 35 feet at its northern crossing and 64 feet at its southern crossing. Dakota Access further testified that the Little Missouri River, the Knife River, the Heart River, and both crossings of Cherry Creek will also be bored in order to minimize environmental impacts to those waterbodies.
48. Dakota Access has committed to protecting the integrity of wetlands and waterbodies crossed by the route by using best management practices in order to minimize erosion and to prevent sediment discharge, which will include minimizing the footprint of environmental disturbance by reducing the workspace; maintaining vegetative barriers; and installing sediment barriers, trench plugs, and slope breakers as necessary.
49. Construction activities that may impact federally protected species and critical habitats will be subject to oversight by the USFWS through its Section 7 consultation process.

50. Where collocation of the Project occurs with North Dakota Pipeline Company's (NDPL's) permitted routes, Dakota Access and NDPL have agreed as to pipeline separation distances, the width and restoration of temporary work space buffer zones, and communications protocol, as described in NDPL's January 7, 2016, filing in this proceeding.

51. Dakota Access has agreed to a number of steps to mitigate the impact of the Project as indicated by the Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications filed in this proceeding, which is incorporated by reference and attached to this Order.

From the foregoing Findings of Fact the Commission makes the following conclusions of law:

Conclusions of Law

1. The Commission has jurisdiction over Dakota Access and the subject matter of these applications under North Dakota Century Code chapter 49-22.
2. Dakota Access is a utility as defined in North Dakota Century Code section 49-22-03(13).
3. The Project is a transmission facility as defined in North Dakota Century Code section 49-22-03(12).
4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
6. The location, construction, and operation of the Project is compatible with the environmental preservation and the efficient use of resources.
7. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
8. The Project is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code section 49-22-07.2.
9. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the waiver application under North Dakota Century Code section 49-22-07.2.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

Order

The Commission orders:

1. Dakota Access' application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. 179 is issued to Dakota Access, designating a corridor for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties; the Stanley Tank Terminal in Mountrail County; the Ramberg Tank Terminal, the Epping Tank Terminal, and the Trenton Tank Terminal in Williams County; and the Watford City Tank Terminal and the Johnsons Corner Tank Terminal in McKenzie County, North Dakota. The Corridor will consist of the tank terminal sites as depicted in Exhibit A of the Application, "Project Aerial Maps", and a 400-wide area centered on the route.
3. Route Permit No. 191 is issued to Dakota Access, designating a route for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota. The designated route for this purpose is depicted in Exhibit A of the Application, "Project Aerial Maps", as revised by the route adjustments depicted in Dakota Access' September 14, 2015 (Seventeen Adjustments) and December 2, 2015 (Hovde Reroute) filings.
4. The May 20, 2015, Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.
5. To the extent that there are any conflicts or inconsistencies between Dakota Access' applications in this proceeding and the Certification, the Certification provisions control.
6. Dakota Access shall file with the Commission documentation from NDSHPO indicating concurrence that no historic properties or sites will be affected prior to beginning construction on any portion of the Project where SHPO concurrence has not yet been received.
7. Dakota Access and NDPL have agreed to pipeline separation distances, the width and restoration of temporary work space buffer zones, and communications protocol concerning the Project and NDPL's permitted routes, as described in NDPL's January 20, 2016, filing in this proceeding.

8. Dakota Access is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the application within the corridor granted in this proceeding.

9. Dakota Access shall comply with all rules and regulations of all agencies having jurisdiction over any phase of the Project, and shall obtain and file with the Commission prior to beginning construction all necessary licenses and permits for construction of any portion of the Project for which the license or permit is required.

PUBLIC SERVICE COMMISSION

Recuse

**Randy Christmann
Commissioner**

Julie Fedorchak

**Julie Fedorchak
Chairman**

B. P. Kalk

**Brian P. Kalk
Commissioner**

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

Certificate of Corridor Compatibility Number 179

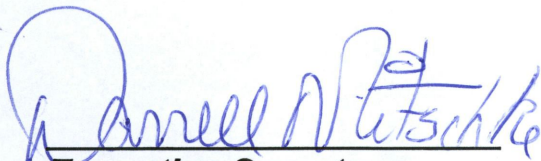
This is to certify that the Commission has designated a transmission facility corridor to Dakota Access, LLC, for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County, North Dakota.

This certificate is issued in accordance with the Order of the Commission dated January 20, 2016, in Case No. PU-14-842 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, January 20, 2016

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Route Permit Number 191

This is to certify that the Commission has designated a transmission facility route for Dakota Access, LLC, for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County, North Dakota.

This permit is issued in accordance with the Order of this Commission dated January 20, 2016, in Case No. PU-14-842 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, January 20, 2016.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Project
Siting Application

Case No. PU-14-842

**CERTIFICATION RELATING TO ORDER PROVISIONS - TRANSMISSION FACILITY
SITING**

I am Jacy Mahmood, a representative of Dakota Access, LLC ("Company") with authority to bind the Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
3. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
4. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
5. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
6. Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48

inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.

7. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
8. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
9. Company agrees to construct and operate the transmission facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. Company agrees to report promptly to the Commission the presence in the permit area of any critical habitat or threatened species, endangered species, bald eagles, or golden eagles of which Company becomes aware and which were not previously reported to the Commission.
11. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.
13. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission

facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
17. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. Company understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility, associated facilities, and roadways will continue throughout the life of the transmission facility.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Company understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
22. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
23. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.

24. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
25. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
27. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the transmission facility, including injuries to any person, or the death of any threatened or endangered species on the site within five business days of such event.
28. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
29. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
30. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
31. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
32. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of

the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

33. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
34. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.
35. Company understands and agrees that the corridor certificate and route permit are subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.
36. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3:
37. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
38. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

39. ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED: Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, route and the route adjustment;
 - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
 - i. That construction activities will be within the designated corridor
 - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
- 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and

maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

40. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route

41. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, corridor adjustment, route and the route adjustment;
 - ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;

- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.


Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
- 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

42. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 20th day of May, 2015.

DAKOTA ACCESS, LLC

By 
Joley Mahmood

Its VP-Engineering

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Project
Siting Application

Case No. PU-14-842

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.

6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

Invasive or noxious species must be replaced by similar non-invasive or non-noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).